IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.195 OF 2005

Vijay P. Agale & Ors. ...Applicants.

v/s

C.B.I. & Anr. ...Respondents.

Mr. A.P. Mundargi with Mr. Niranjan Mundargi,
advocate for the applicants.

Mr. S.R. Shinde, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 3rd March, 2005

P.C.

1. Heard the learned Counsel for the applicants and the learned APP for the State.

2. Applicants are challenging the order passed by the Special Judge for Greater Bombay in CBI Special Case No.84 of 2001. By the said judgment and order, the Special Judge was pleased to dismiss the application of the applicants regarding jurisdiction of the court to entertain and try the case, firstly, on the ground of territorial jurisdiction and, secondly, on the ground that the provisions of the Prevention of Corruption Act are not attracted in the facts and circumstances of the case.

3. Prosecution case is that the accused, who were

public servants, entered into conspiracy to extort money from Mr. Naveen Lalji Sabla, partner of M/s Shri Nityanand Auto Service and, in pursuance of the said criminal conspiracy, went to the petrol station. The accused No.1 flaunted his Identity Card and introduced himself and others as Officers of the CBI and demanded illegal gratification of Rs 5 lakhs for allegedly suppressing the inquiry which was being conducted by the CBI against the business of M/s Shri Nityanand Auto Service and, in the process, succeeded in extorting an amount of Rs 3 lakhs and, thereafter, collected further amount of Rs 1 lakh.

4. It is submitted by the learned Counsel appearing on behalf of the applicants that even if the prosecution case is accepted at its face value then also, an offence punishable under section 13(1)(d) of the Act has not been made out inasmuch as though the accused were public servants it was not within their capacity to suppress the investigation which was allegedly carried out by the CBI. It is, therefore, submitted that the said act would not fall within the definition of section 13(2)(d). In support of the said submission, the learned Counsel relied upon the judgment of the Supreme Court in the case of **The State of Ajmer (now Rajasthan) Vs. Shivji Lal** reported in

AIR 1950 SC 847 wherein the Supreme Court has held that the Government Teacher who promised the complainant to give a job in Railway Loco Shed and obtained money for the said purpose, did not commit an offence punishable under section 13(1)(d).

5. I am unable to accept the submission made by the learned Counsel for the applicants. In my view, this is a question of fact which can be determined only after the evidence is adduced regarding the manner and the purpose for which the money was demanded and accepted by the accused. It will not be possible, at this stage, to arrive at a decision as to whether the provisions of section 13(1)(d) are attracted or not. So far as the judgment which is relied upon by the learned Counsel for the applicants is concerned, there cannot be any dispute regarding the ratio of the said judgment. However, in that case, a teacher working in the Government School had demanded money for procuring job in Railway Loco Shed. The facts of the said case were entirely different. In the present case, two accused were admittedly working in CBI. Applicant No.1 is Police Inspector and two others were working in Excise Department. The Criminal Application is, therefore, dismissed. All questions in respect of the legal submissions made by the learned Counsel for the

applicants regarding applicability of Section 13(1)(d)

are kept open.

V.M. KANADE, J.